

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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JOHN DUFFY, KENNETH HUBER, PHILLIP
CAPOBIANCO, SCOTT ADRIAN, PAUL O'BRIEN,
MARC HERBST, JAMES HANEY III, and JAMES
PRATT, III, as Trustees of LOCAL 138, 138A & 138B,
INTERNATIONAL UNION OF OPERATING
ENGINEERS WELFARE FUND, LEGAL FUND,
APPRENTICESHIP TRAINING FUND, and ANNUITY
FUND, and MICHAEL FANNING as CEO of the
CENTRAL PENSION FUND, and WILLIAM K. DUFFY,
JR. as President of LOCAL 138, 138A & 138B,
INTERNATIONAL UNION OF OPERATING
ENGINEERS,

Plaintiffs,

-against-

OYSTER BAY INDUSTRIES, INC. and
JAMES FUNFGELD,

Defendants.

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APPEARANCES:

Archer, Byington, Glennon & Levine, LLP

Attorneys for the plaintiffs

One Huntington Quadrangle, Suite 4C10
Melville, NY 11747

By: Paula A. Clarity, Esq.

John H. Byington, III, Esq., Of Counsel

NO APPEARANCE

Defendant Oyster Bay Industries
Defendant James Funfgeld

SPATT, District Judge.

ORDER
10-cv-3205 (ADS) (ETB)

On October 22, 2010, the Court referred this matter to United States Magistrate Judge E. Thomas Boyle for a report and recommendation as to the amount of damages, attorneys' fees, and costs to be awarded following the entry of a default judgment against the defendants Oyster Bay Industries and James Funfgeld. On March 29, 2011, Judge Boyle issued a Report recommending that the Court award the plaintiffs damages as follows: "(1) unpaid contributions in the amount of \$44,161.53; (2) interest in the amount of \$2,719.99, from June 1, 2008 through the date of this Report and Recommendation [March 29, 2011], with additional interest to be awarded through the date of judgment entered herein, calculated at a rate of \$4.04 per day; (3) liquidated damages in the amount of \$8,832.31; (4) post-judgment interest, to be calculated pursuant to 28 U.S.C. § 1961; (5) audit fees in the amount of \$4,080.74; (5) attorney's fees in the amount of \$4,856.00 and, (6) costs in the amount of \$585.90. Thus, the sum total of the recommended judgment is \$65,236.47, plus additional interest through the date of judgment entered herein as well as postjudgment interest, pursuant to 28 U.S.C. § 1961." To date, there have been no objections filed to the Report.

In reviewing a report and recommendation, a court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. §636(b)(1)(C). "To accept the report and recommendation of a magistrate, to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record." Wilds v. United Parcel Serv., 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003) (citing Nelson v. Smith, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985)). The Court has reviewed Judge Boyle's Report and finds it be persuasive and without any legal or factual errors. There being no objection to Judge Boyle's Report, it is hereby

ORDERED, that Judge Boyle's Report and Recommendation is adopted in its entirety. The

Court awards the plaintiffs: (1) unpaid contributions in the amount of \$44,161.53; (2) interest in the amount of \$2,719.99, with additional interest to be awarded from March 29, 2011 through the date of judgment entered herein, calculated at a rate of \$4.04 per day; (3) liquidated damages in the amount of \$8,832.31; (4) post-judgment interest, to be calculated pursuant to 28 U.S.C. § 1961; (5) audit fees in the amount of \$4,080.74; (5) attorney's fees in the amount of \$4,856.00 and, (6) costs in the amount of \$585.90., and it is further

ORDERED, that the Clerk of the Court shall enter a judgment for the Plaintiff in the total amount of \$65,236.47, plus additional interest from March 29, 2011 through the date of judgment calculated at a rate of \$4.04 per day as well as postjudgment interest, pursuant to 28 U.S.C. § 1961, and it is further

ORDERED, that the Clerk of the Court is directed to close this case.

SO ORDERED.

Dated: Central Islip, New York
June 2, 2011

/s/ Arthur D. Spatt
ARTHUR D. SPATT
United States District Judge